STATE OF DELAWARE

PUBLIC EMPLOYMENT RELATIONS BOARD

CAROL W. PEARSON,	:	
	:	
Charging Party,	:	
	:	
v.	:	U.L.P. No. 95-03-122
	:	
PUBLIC HEALTH NURSE COUNCIL/DSEA	:	
	:	
Respondent.	:	

BACKGROUND

Charging Party, Carol Pearson, (hereinafter "Petitioner") is a public employee within the meaning of Section 1302(m) of the Public Employment Relations Act, 13 Del. C. Chapter 13 (hereinafter "Act").

The Respondent, the Public Health Nurse Council (hereinafter "Respondent") is an employee organization within the meaning of Section 1302(h), of the Act.

The Rules and Regulations of the Delaware Public Employment Relations Board (hereinafter "PERB") at Article V, Unfair Labor Practice Proceedings, Section 6, Decision or Probable Cause Determination, provide, in relevant part:

> Upon review of the Complaint, the Answer and the Response, the Executive Director shall determine whether there is probable cause to believe that an unfair labor practice may have occurred. If the Executive Director determines that there is no probable cause to believe that an unfair labor practice has occurred, the party filing the charge may request that the Board review the Executive Director's decision in accord with the provisions set forth in Regulation 7.4. The Board shall decide such appeals following a review of the record, and, if the Board deems necessary, a hearing and/or the submission of briefs.

The following is the probable cause determination of the Executive Director in the above-captioned matter.

FACTS

On March 21, 1995, the Charging Party filed an unfair labor practice complaint with the PERB. The material facts underlying the complaint are set forth in Paragraphs 3 through 12 of the Complaint:

> 3. As a condition of continued employment, I [Pearson] completed a DSEA enrollment form on February 23, 1995.
>
> 4. The enrollment form was marked to indicate that the enrollment was for a service fee only, and that the total annual fee was $297.44.
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> 5. The enrollment form was also marked to indicate that the fee could be collected by payroll deduction in the amount of $12.3933 per pay period. This amount was indicated in two different places.
>
> 6. As instructed, the completed enrollment form was sent by state mail to Patricia Provato who was designated as the local association representative.
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> 7. On March 6, 1995, a copy of the enrollment form was returned from DSEA to me. The amount of the payroll deduction ($12.3933) had been crossed off in both places and the amount of $24.7866 had been written in. A copy of the document is attached.
>
> 8. Since this change in payroll deduction amount had been made without my knowledge or consent, I immediately called Patricia Provato to determine who made the change and why.
>
> 9. Patricia Provato stated she had no knowledge of the change, that she forwarded the enrollment form after signing it without making any revisions. She stated that she would contact DSEA to find out more details.
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> 10. Shortly after the conversation with Patricia Provato, she called back to say that she had spoken with Patricia Lynch who is the President of the Public Health Nurse Council. Patricia Provato reported that Patricia Lynch stated that she had no knowledge of the alterations made to the enrollment form and that I should contact Judy Bickling in the DSEA office in Dover.
>
> 11. I immediately contacted Judy Bickling and she stated that she had been told by Patricia Lynch and Beverly Correll to change the amount of payroll deduction

because the membership year ran from September 1, 1994 and since I was just joining, I owed the back dues.

12. It is my contention that DSEA illegally altered my payroll deduction form without my knowledge or authorization. It could have been my intent to pay the back dues by another means of payment.

13. The aforesaid actions of the Respondent constitute unfair labor practices under 19 Del.C. §§1303(4), 1307(b)(1) and 1307(b)(6).

The allegations set forth in the Complaint are, for the most part not disputed. However, new matter set forth in the Answer filed by the Respondent on March 31, 1995, and the Response by the Charging Party on April 13, 1995, establish the following:

1. Prior to January 1, 1994, a majority of the bargaining unit of which the Charging Party is a member voted to have the Respondent as its exclusive bargaining representative.

2. The summer issue of the Delaware PHN News distributed to all bargaining unit members included the following notice:

DSEA MEMBERSHIP REQUIRED

Membership in the union currently representing Delaware PHN's [Public Health Nurse] has been a condition of employment since 1982. When the members voted in 1984, it was decided then that DSEA would be our new bargaining agent. PHN's who have not yet made membership applications need to do so or pay a service fee. Failure to make arrangements may ultimately lead to termination of employment.

3. By letter from Association President Patricia Lynch, dated September 20, 1994, Charging Party was reminded that the payment of either membership dues or the designated service fee for non-members was contractually required as a condition of employment. Unless the required payment was received by September 30, 1994, management would be advised of her non-member non-fee-payer status and her immediate termination requested.

4. By letter from Association President to the Departmental Director dated October 4, 1994, the termination of Charging Party for non-compliance with Article 4 of the collective bargaining agreement was requested.

5. The State's failure to enforce Article 4 resulted in the filing of both an unfair labor practice charge with the Public Employment Relations Board and a grievance under the collective bargaining agreement. When the State agreed to be bound by and enforce Article 4, the grievance was resolved on February 3, 1995, and the unfair labor practice charge was withdrawn.

6. Thereafter, by letter from Association President Patricia Lynch, dated February 16, 1995, Charging Party was again advised of her obligation to pay either the annual membership dues or an annual service fee for the period September 1, 1994 through August 31, 1995, in the amount of $370.00 or $297.44, respectively. Enclosed with this letter was the enrollment application form completed by Charging Party which constitutes the basis of the complaint.

ISSUE

Whether there is probable cause to believe that an unfair labor practice may have occurred in violation of Section 1303(4) and/or Section 1307(b)(1) and/or Section 1307(b)(2) of the Act, as alleged.

OPINION

The standard enrollment form provided by the Association and completed by Charging Party on February 23, 1995, refers to the "Annual Payment" due to the Association depending upon whether the bargaining unit member is obligated to pay the annual dues required of Association members or the annual service fee required of non-members as indicated, plus an optional $10.00 contribution to the Association's Political Action Committee for Education (PACE) where designated.

Specifically, the enrollment form provides:

> .....I authorize my employer to deduct from my salary and pay to the local association in accordance with the agreed-upon payroll deduction procedure, my

> professional UTP dues and assessments as may be determined from time to time and my political action contributions as indicated above for the current membership year and each membership year, thereafter, provided that I may revoke this authorization as of September 1 of any calendar year by giving written notice to that effect to my Employer and DSEA on or before August 31 of that year. (emphasis added)

It is undisputed that all times material to this dispute that a valid and binding collective bargaining agreement was in effect between the State of Delaware, Department of Health and Social Services, and the Delaware Public Nurses Council/DSEA, the exclusive bargaining agent for the bargaining unit of which Charging Party is a member. Included in the Agreement is Article 4, Article 4 - Dues Deduction, which provides, in relevant part:

> 4.1 The Employer agrees to deduct upon written authorization equal installments of the Association dues from member employees' paychecks, or service fees from those employees who do not choose Association membership, following the 90th day of employment. (emphasis added)

Considered together, these documents establish that a properly executive enrollment form authorizes the Employer to deduct the annual dues or the service fee, as determined by the Association, in accord with the agreed-upon payroll deduction procedure. The deduction procedure agreed upon by the parties is to deduct the annual payment in equal installments.

It is undisputed that the annual service fee for which Charging Party as a non-member of the Association is responsible is $297.44. Her calculation of $12.39 per pay is based upon equal installments spread over two (2) paychecks per month per fiscal year. However, despite prior knowledge of her financial obligation, Charging Party paid nothing during the first six (6) months of the Association's fiscal year. On February 23, 1995, she authorized the deduction of her annual obligation during the last six (6) months of the Association's fiscal year. Article 4 of the collective bargaining agreement requires that the deductions be made in equal installments. Because Charging Party's authorization was not made until six (6) months into the fiscal year, her annual obligation of $297.44 was required to be withheld in equal installments of $24.79 over the remaining 12 pay periods. Charging Party's unilateral decision to enter an amount

inconsistent with the agreed-upon procedure does not obligate either the Employer or the Association to act in a manner contrary to the contract.

Furthermore, the Act, itself, confers upon the Association the authority to certify the monthly amount of dues to be deducted by the Employer the deduction has been authorized by an employee. Specifically, Article 1306 of the Act provides, in relevant part:

> (c) Upon the written authorization of any public employee within a bargaining unit, the public employer of the public employee the monthly amount of dues certified by the secretary and shall deliver the same to the treasurer of the exclusive bargaining representative. (emphasis added)

No reason has been offered nor is one perceived why the same authority should not also apply equally to the financial obligation of a non-member in the form of the service fee as well as to the financial obligation of a member in the form of dues.

DECISION

Based upon the foregoing discussion there is no probable cause to believe that an unfair labor practice in violation of Section 1303(4) or 1307(b)(1) or (b)(6) may have occurred and the petition is, therefore, dismissed.

IT IS SO ORDERED.

/s/ Charles D. Long, Jr.
CHARLES D. LONG, JR.
Executive Director
Del. Public Employment Relations Bd.

DATED: May 2, 1995